

NTSB Order No. EA-3804

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 10th day of February, 1993

Respondent.

conduct. We grant the appeal and reinstate the order of suspension.

The law judge found, as a matter of fact, that respondent, while flying his helicopter, uttered obscenities over his radio to another helicopter pilot, who was on the ground nearby preparing to take off. Thereafter,

[r]espondent landed his helicopter, got out of the helicopter, walked immediately over, pulled the door open . . . reached in, he either hit Mr. Melick or punched him with his fingers -- in any event, got his attention and said he was going to kick his . . . at some time later.

Tr. at 171. These facts are not challenged on appeal.

The law judge also found, as a matter of law, that a violation of 14 C.F.R. 91.8(a) had been established.² Nevertheless, the law judge declined to affirm the sanction. He concluded that, because respondent was not exercising his certificate at the time of the incident, Section 609 would not support the Administrator's order. The law judge reasoned that Section 609 requires that the respondent be exercising the rights of a certificate in support of or in connection with the alleged violation and that here he was not because respondent had removed himself from his aircraft. The propriety of this conclusion is the only matter before us.

²§ 91.8(a) (now § 91.11) reads:

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.

This finding is also not challenged on appeal.

We agree with the Administrator that the law judge's conclusion is not sustainable. The statute itself does not support this interpretation. It explicitly provides very broad authority to the Administrator to issue an order amending, modifying, suspending or revoking a certificate when he determines that such action is required by safety in air commerce or air transportation and the public interest.³ It does not, on its face, require a nexus between the complained-of action and the exercise of a certificate.

Nor do we see in the statute any intent to impose limitations on the Administrator's authority such as the law judge suggests. We decline, on the basis of this record, to interpret Section 609 as imposing such a constricting requirement. There is no doubt that respondent's actions here compromised safety in air commerce.

Moreover, the law judge's interpretation would be inconsistent with our precedent in two regards. First, we do not second guess the Administrator's determination of what rules are

³Section 609(a), as pertinent, provides:

The Administrator may, from time to time, reinspect any civil aircraft, aircraft, engine, propeller, appliance, air navigation facility, or air agency, or may reexamine any civil airman. If, as a result of any such reinspection or reexamination, or if, as a result of any other investigation made by the Administrator, he determines that safety in air commerce or air transportation and the public interest requires, the Administrator may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate (including airport operating certificate), or air agency certificate.

required for the public safety. The Federal Aviation Regulations are not uniformly framed as applicable against certificate holders only. The instant rule is directed to all "persons," not all "certificate holders." Under the law judge's theory, we would have to conclude that § 91.11 is void as beyond the Administrator's authority because, obviously, a respondent's action cannot be connected to exercise of a certificate if the respondent has no certificate to exercise. Reaching this conclusion would require us to rule on the lawfulness of this provision. We have often held that our role extends only to reviewing the Administrator's findings of fact and actions thereunder. See Administrator v. Ewing, 1 NTSB 1192, 1194 (1971).

Second, the weight of precedent opposes the conclusion of the initial decision. For example, cases where the Administrator has obtained revocation of a certificate on a showing of lack of good moral character are often based on incidents wholly unrelated to the operation of aircraft. See, e.g., Administrator v. Roe, 45 C.A.B. 969 (1966). See also Administrator v. Konski, 5 NTSB 275 (1985).⁴

⁴Even before the Administrator was given specific authority to take action against airmen convicted of certain drug offenses (see 49 U.S.C. App. 1429), regulatory authority existed for certificate suspension or revocation in the case of conduct wholly unrelated to the operation of an aircraft. See, e.g., 14 C.F.R. 61.15. If conduct that presents only a potential threat to air safety, such as an airman's conviction for a drug or alcohol offense, can support certificate action, surely conduct such as respondent's that actually jeopardizes air safety can do so.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The order of suspension is affirmed; and
3. The 30-day suspension of respondent's airman certificate shall begin 30 days from the date of service of this order.⁵

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁵For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).